

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Telecommunications Management, LLC)	
d/b/a NewWave Communications)	
)	
Operator of Cable Systems in:)	
)	
Ashdown, Arkansas)	File No. EB-04-HS-008
Fulton, Kentucky)	
Wheatland, Missouri)	
Chesterfield, South Carolina)	
Pageland, South Carolina)	
Bolivar, Tennessee)	
Bradford, Tennessee)	
Brownsville, Tennessee)	
Covington, Tennessee)	
Dyer, Tennessee)	
Ripley, Tennessee)	
)	
Request for Waivers of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: March 22, 2004

Released: March 23, 2004

By the: Director, Office of Homeland Security, Enforcement Bureau:

1. In this *Order*, we grant Telecommunications Management, LLC d/b/a/ NewWave Communications ("NewWave") temporary waivers of section 11.11(a) of the Commission's Rules ("Rules")¹ for the eleven above-captioned cable television systems. Section 11.11(a) of the Rules requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.²

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934, which requires that cable systems be capable of providing EAS alerts to their subscribers.³ In 1994, the

¹ 47 C.F.R. § 11.11(a).

² *Id.*

³ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same (continued....)"

Commission adopted rules requiring cable systems to participate in EAS.⁴ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁵ The Commission declined to exempt small cable systems from the EAS requirements entirely, however, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁶ The amended rules extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁷ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁸

3. On January 14, 2004, NewWave filed a request for temporary waivers of the EAS requirements for the above-captioned cable systems, asserting that the cost of immediate installation of EAS equipment in the 11 systems would cause financial hardship. NewWave states that the 11 systems lacked EAS equipment when it acquired the systems in September 2003. In support of its waiver requests, NewWave reports that these are small cable systems, with the six systems in Ashdown, Bradford, Chesterfield, Covington, Pageland, and Wheatland serving between 253 and 919 subscribers and the five systems in Bolivar, Brownsville, Dyer, Fulton, and Ripley serving between 1,043 and 1,938 subscribers. NewWave reports that it plans to: (1) upgrade the subject cable systems; (2) interconnect the Ripley and Brownsville systems and the Bradford and Dyer systems; and (3) perform this upgrade and interconnection in stages throughout 2004, with completion of the final phases by early 2005. Based on price quotes provided by EAS equipment manufacturers, NewWave estimates that it will cost approximately \$110,000 to purchase and install EAS equipment at the 11 headends. NewWave asserts that the estimated cost of \$20,000 to install EAS equipment at the Brownsville and Bradford systems will impose an unnecessary financial expenditure because the two headends will be eliminated once the interconnection is completed. NewWave provides financial data in support of its contention that the cost of immediate installation of EAS equipment in the 11 cable systems would cause substantial financial hardship. Finally, NewWave contends that subscribers will continue to have ready access to national EAS information from other sources, including its cable system and over-the-air reception of broadcast television and radio stations.

4. Based on our review of the financial data and other information submitted by NewWave, we conclude that temporary waivers of section 11.11(a) of the Rules for the above-captioned cable systems is warranted. We also find that the schedule proposed by NewWave for bringing these 11 newly acquired cable systems into compliance with section 11.11(a) of the Rules is reasonable.⁹ Additionally,

(...continued from previous page)

emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations” 47 U.S.C. § 544(g).

⁴ *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 1786 (1994), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

⁵ *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd 15503 (1997).

⁶ *Id.* at 15512-13.

⁷ *Id.* at 15516-15518.

⁸ *Id.* at 15513.

⁹ NewWave seeks waiver of section 11(a) of the Rules for: (1) Fulton, Kentucky until June 1, 2004; (2) Bolivar, Brownsville, and Ripley, Tennessee until January 1, 2005; (3) Dyer and Bradford, Tennessee until March 1, 2005; (continued....)

we find that the estimated \$20,000 cost of installing EAS equipment for the Brownsville and Bradford systems, which will soon be interconnected with other NewWave systems, could impose an unnecessary financial expenditure for NewWave.¹⁰

5. NewWave also requests that any waivers that are granted for the subject cable systems continue to apply if the systems are sold.¹¹ NewWave contends that the Commission has recognized the importance of small cable system relief following a system after its sale to a larger operator.¹² In support of this contention, NewWave cites a 1995 Commission Order which determined that small cable systems eligible for relief from cable rate regulation should remain eligible for such relief even if the system is subsequently acquired by a larger cable operator.¹³

6. We deny this request; the temporary waivers of section 11.11(a) of the Rules granted in this Order will not continue to apply if the captioned cable systems are sold. We have previously stated that waivers of section 11.11(a) of the Rules do not continue to apply when cable systems are sold and have specifically rejected arguments similar to those made by NewWave.¹⁴ Our decision to grant these temporary waivers is based on our review of the financial data and other information submitted by NewWave. That information demonstrates that the estimated cost of EAS equipment for the captioned cable systems could impose a substantial financial hardship on NewWave and could impose an unnecessary financial expenditure for two of NewWave's systems. We have no basis for determining whether compliance with the EAS requirements would impose a similar financial hardship on any buyer or buyers if any of NewWave's cable systems are sold. As stated in *Galaxy Cable*, the policy of allowing small cable systems to remain eligible for relief from rate regulation when they are subsequently acquired by a larger operator should not be automatically extended to the EAS context.¹⁵ There is a significant distinction between the ongoing regulatory burdens and costs associated with rate regulation and the one-time expense of installing EAS equipment.¹⁶ In view of the serious public safety objectives underlying the EAS rules, it would not be appropriate to automatically extend the temporary waivers granted for NewWave's systems to any subsequent buyer regardless of its size or financial status. However, we will afford any such buyer 30 days from the date of consummation of the sale of a cable system to request a waiver of section 11.11(a) of the Rules and to submit the information necessary to

(...continued from previous page)

and (4) Ashdown, Arkansas; Wheatland, Missouri; Chesterfield and Pageland, South Carolina; and Covington, Tennessee until October 1, 2005.

¹⁰ See also, *Cable One Inc.*, 19 FCC Rcd 2381 (Director, Office of Homeland Security, Enforcement Bureau 2004); *Cable One, Inc.*, 18 FCC Rcd 7646 (Chief, Technical and Public Safety Division, Enforcement Bureau 2003) (granting similar temporary waiver requests).

¹¹ To partially finance EAS equipment, upgrades, and interconnections, NewWave plans to sell the cable systems in Ashdown, Chesterfield, Pageland, Covington, and Wheatland by October 2005.

¹² NewWave's January 14, 2004, Request for Temporary Waivers at 7.

¹³ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7413 (1995).

¹⁴ See *Galaxy Cable, Inc.*, 18 FCC Rcd 14522, 14524 (Chief, Spectrum Enforcement Division, Enforcement Bureau 2003) ("*Galaxy Cable*").

¹⁵ *Id.*

¹⁶ *Id.*

support a financial hardship showing.¹⁷ Any buyer that does not file a waiver request will be required to come into compliance with the EAS rules by the end of the 30-day period.¹⁸

7. Accordingly, **IT IS ORDERED** that, pursuant to sections 0.111, 0.204(b) and 0.311 of the rules,¹⁹ Telecommunications Management, LLC d/b/a NewWave Communications' request for temporary waivers of section 11.11(a) of the Rules is **GRANTED** for the following systems, Fulton, Kentucky until June 1, 2004; Bolivar, Brownsville, and Ripley, Tennessee until January 1, 2005; Dyer and Bradford, Tennessee until March 1, 2005; Ashdown, Arkansas; Wheatland, Missouri; Chesterfield and Pageland, South Carolina; and Covington, Tennessee until October 1, 2005.²⁰

8. **IT IS FURTHER ORDERED** that Telecommunications Management, LLC d/b/a NewWave Communications' request that the temporary waivers of section 11.11(a) continue to apply if the systems are sold is **DENIED**.

9. **IT IS FURTHER ORDERED** that Telecommunications Management, LLC d/b/a NewWave Communications place a copy of this waiver in its system files.

10. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail Return Receipt Requested to counsel for Telecommunications Management, LLC d/b/a NewWave Communications, Christopher C. Cinnamon, Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

James A. Dailey
Director, Office of Homeland Security
Enforcement Bureau

¹⁷ See *Galaxy Cable*, 18 FCC Rcd at 14524.

¹⁸ We note that NewWave acquired these 11 cable systems in September 2003 and should have filed its waiver request before January 14, 2004. Nevertheless, for the reasons stated *supra* at ¶4, we find that the compliance schedule proposed by NewWave for the 11 captioned cable systems is reasonable.

¹⁹ 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

²⁰ We clarify that these waivers also encompass the EAS testing and monitoring requirements.